

Cce Vs. Bharti Telecom Ltd.

Cce Vs. Bharti Telecom Ltd.

SooperKanoon Citation : sooperkanoon.com/29544

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-09-2002

Judge : K Usha, a T V.K.

Appellant : Cce

Respondent : Bharti Telecom Ltd.

Judgement :

1. In this appeal at the instance of the Revenue the challenge is against the order passed by the Commissioner (Appeals) dated 27.3.2002.

The respondents are engaged in the manufacture of Electronic Telephones falling under Chapter 85 of Central Excise Tariff Act, 1985. During the period from March 1994 to July 1994 they had cleared/sold telephone sets to various Govt. agencies like DOT. Contending that the prices finally approved by the Govt. agencies were less than the prices at which the appellants had sold the goods at the factory gate, an application for refund of Rs. 3,41,304.47 was made. The adjudicating authority rejected their claim. It was held that the assessee had not filed Price List in Part-II as required prior to 1.4.94 and it has not been brought to the notice of the Department that the price was provisional. It was also held that for the period after 1.4.94 the assessee has not given the appropriate certificate as provided under the Rules. Commissioner (Appeals) allowed the appeal filed by the assessee. It is the above order that is under challenge before us.

2. The respondent has no case that it has followed the procedure prescribed under Rule 9B. But the contention raised is that non-compliance with the procedure should be condoned and the refund claim should be granted.

3. We find merit in the contention raised by the Revenue. The assessee had, at no stage, intimated that Department about the provisional nature of the price, It has not followed the procedure prescribed under Rule 9B. It has no case that the application for refund was made within a period of six months. Under these circumstances, according to us, the assessee is not entitled to the refund as allowed by the Commissioner (Appeals).

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com